

立法會
Legislative Council

Ref : CB4/BC/11/20

LC Paper No. CB(4)1783/20-21
(These minutes have been seen
by the Administration)

**Bills Committee on National Flag and National Emblem
(Amendment) Bill 2021**

**Minutes of the first meeting
held on Friday, 27 August 2021, at 4:00 pm
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon CHEUNG Kwok-kwan, JP (Chairman)
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBM, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Steven HO Chun-yin, BBS, JP
Hon YIU Si-wing, SBS
Hon CHAN Han-pan, BBS, JP
Hon KWOK Wai-keung, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon Martin LIAO Cheung-kong, GBS, JP
Ir Dr Hon LO Wai-kwok, GBS, MH, JP
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai, JP
Hon YUNG Hoi-yan, JP
Hon LUK Chung-hung, JP
Hon LAU Kwok-fan, MH, JP
Hon Tony TSE Wai-chuen, BBS, JP

Member absent : Dr Hon CHIANG Lai-wan, SBS, JP

Public Officers attending : Mr Erick TSANG Kwok-wai, IDSM, JP
Secretary for Constitutional and Mainland Affairs

Miss Katharine CHOI Man-ye
Deputy Secretary for Constitutional and Mainland Affairs (2)

Ms Cordelia LAM Wai-ki
Principal Assistant Secretary (Constitutional & Mainland
Affairs)7

Miss Jamie TSE Yik-yan
Assistant Secretary (Constitutional & Mainland Affairs)7A

Mr Lawrence PENG Si-yun
Deputy Law Draftsman III
Department of Justice

Mr Gary LI Ming-fung
Senior Government Counsel
Department of Justice

Ms Teresa CHAN Mo-ngan
Deputy Secretary for Education (Special Duties)

Mr Harry TSANG Chin-kwong
Director of Protocol
Protocol Division of the Administration Wing

**Clerk in
attendance** : Ms Joanne MAK
Chief Council Secretary (4) 7

**Staff in
attendance** : Miss Rachel DAI
Assistant Legal Adviser 2

Mr Dennis HO
Senior Council Secretary (4)7

Miss Kitty LEUNG
Council Secretary (4)7

Ms Louisa YU
Legislative Assistant (4) 7

I. Election of Chairman (and Deputy Chairman)

Election of Chairman

Mr CHEUNG Kwok-kwan was elected Chairman of the Bills Committee.

2. Members agreed that there was no need to elect a Deputy Chairman for the Bills Committee.

II. Meeting with the Administration

[File Ref.: CMAB S/F (1) to E4/1, LC Paper Nos. CB(3)864/20-21, LS110/20-21 and CB(4)1439/20-21(01) to (03)]

3. The Bills Committee deliberated (index of proceedings attached at **Annex I**). The opening speech delivered by the Secretary for Constitutional and Mainland Affairs ("SCMA") is attached at **Annex II**.

Discussion

4. The major views and concerns raised by members are set out in paragraphs 5 to 15 below.

Desecration of the national flag and national emblem

5. Members noted that clause 6 of the Bill sought to amend section 4 of the National Flag and National Emblem Ordinance ("NFNEO") to provide for additional circumstances in which the national flag and national emblem must not be used or disposed of inappropriately (e.g. a national flag or a national emblem must not be displayed upside down, must not be displayed or used in any way that undermines the dignity of the national flag or the national emblem, and must not be discarded at will). SCMA explained that while the proposed new section 4 was a directional provision that did not impose any penalties, if the elements of the offences under the proposed new section 7 were proved (i.e. publicly and intentionally desecrating the national flag or national emblem), an act in contravention of the proposed new section 4 might constitute an offence under the Bill.

6. In response to members' concerns on various scenarios that might contravene the proposed new section 4(2) under clause 6 of the Bill (e.g. unintentionally displaying the national flag upside down or sideways), SCMA reiterated that under the proposed new section 7(1) and 7(2), publicly and intentionally desecrating the national flag or national emblem by burning, mutilating, scrawling on, defiling or trampling on it or its image or in any other way, or intentionally publishing such a

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desecration with intent to desecrate the national flag or national emblem, would be a criminal offence.

7. Members also expressed concerns about tackling online offences of desecrating behaviour in relation to the national flag and national emblem. Mr LUK Chung-hung enquired whether behaviours of spoofing the national flag and national emblem on the Internet, such as the act of replacing the five stars on the national flag with five virus shapes, would contravene the proposed new section 7. SCMA advised that it would depend on whether the relevant image resembled the national flag so closely as to lead to the reasonable belief that the relevant image was the national flag as pursuant to the proposed amended section 8, and whether the elements of the offences specified in the proposed new section 7, i.e. publicly and intentionally desecrating the national flag, were present. It would be a question of fact and had to be assessed based on the actual circumstances of each case.

8. SCMA further advised that in dealing with the abovementioned desecrating acts that were committed overseas, the Police would, under the existing legal framework (e.g. through Mutual Legal Assistance Agreements), seek co-operation and assistance from overseas law enforcement agencies as necessary. Mr Steven HO expressed concerns as to whether law enforcement against offences in this area committed on the Internet would involve substantial manpower and whether the Constitutional and Mainland Affairs Bureau had drawn up an enforcement plan in consultation with the Security Bureau. He requested the Administration to provide additional information in writing.

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(Post-meeting note: The supplementary information provided by the Administration [LC Paper No. CB(4)1419/20-21(01)] was tabled at the meeting on 3 September 2021 and was issued the members on the same day.)

Education in national flag and national emblem

9. With regard to the requirement for the Secretary for Education ("SED") to give directions for the inclusion of the national flag and national emblem in primary and secondary education under the proposed new section 7A in clause 11 of the Bill, members enquired about the consequences to be faced by schools for failures to comply with the relevant directions to be given by SED. Members also enquired whether the Administration would strengthen the training for teachers on education in the national flag and national emblem to ensure effective teaching in this area.

10. Deputy Secretary for Education (Special Duties) ("DS(Ed)(SD)") said that schools had the responsibility to educate students to understand and respect the national flag and national emblem. She said that the Education Bureau ("EDB") would keep in view the implementation of education in the national flag and national

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emblem in school through daily contacts, inspections and visits. She assured members that EDB would follow up on irregularities identified in school operations (including non-compliance with the directions given by SED) in a serious manner and request the schools concerned to make rectifications through the existing mechanism, e.g. giving verbal/written warnings or advisory letters. If individual schools did not comply with the requirements, EDB could exercise power conferred by relevant provisions of the Education Ordinance (Cap. 279). EDB was confident that schools would comply with the directions to be given by SED under the proposed new section 7A of NFNEO.

11. On training and support for teachers, DS(Ed)(SD) said that EDB would enhance the provision of the relevant learning and teaching resources for schools. In this connection, a web-based resource platform "National Education One-stop Portal" had been newly developed with a view to facilitating teachers' and students' browsing of and access to the diversified resources relating to, among other things, the national flag and national emblem. Furthermore, from September 2021 onwards, EDB would organize web-based seminars on national flag raising ceremonies for teachers of kindergartens ("KGs"), primary and secondary schools. Throughout the 2021/22 school year, training workshops would also be conducted for teachers so as to strengthen support for schools in fostering the sense of national identity among students through regular conduct of national flag raising ceremonies.

12. Ms YUNG Hoi-yan questioned why SED was required to give directions for the inclusion of the national flag and national emblem only in primary and secondary education but not in KG education as well under the proposed new section 7A(1)(a) of NFNEO. She considered that children should receive education in the national flag and national emblem and develop the sense of national identity from a young age. Mr KWOK Wai-keung pointed out that education in the national flag and national emblem should be covered in the national security education courses run by the universities funded by the University Grants Committee.

13. DS(Ed)(SD) explained that unlike primary and secondary education, which adopted subject-based curricula, KG education aimed at promoting comprehensive and balanced development in children through approaches of "Real-life Themes". Moreover, the proposed new section 7A aimed to reflect Article 21 of the amended Law of the People's Republic of China on the National Flag ("National Flag Law") and Article 15 of the amended Law of the People's Republic of China on the National Emblem ("National Emblem Law"). That said, DS(Ed)(SD) advised that the KG curriculum attached importance to children's moral development and good living habits. Teachers should help students understand the national flag and the etiquette of raising the national flag, as well as recognize that Hong Kong was part of the Country, so that students would develop the sense of belonging to the Country. DS(Ed)(SD) pointed out that EDB had been in communication with universities,

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some of which had already incorporated national security education into their curriculum. DS(Ed)(SD) added that Mr KWOK's view would be relayed to the universities for consideration.

Recovery and disposal of the national flag and national emblem

14. Members noted that clause 5(3) of the Bill proposed to add a new section 3(3A) to empower the Chief Executive to make stipulations in relation to the recovery and disposal of national flags and national emblems. Principal Assistant Secretary (Constitutional & Mainland Affairs)7 ("PAS(CMA)7") explained that the Administration noted that in previous large-scale events, the handheld national flags were often thrown on the ground or discarded casually after the events. To suitably reflect Article 19 of the amended National Flag Law and Article 14 of the amended National Emblem Law regarding the recovery and disposal of the national flags and national emblems in the Bill, on implementation, the Administration planned to set up designated collection points at Community Halls or Community Centres in different Districts for event organizers and members of the public to return any damaged, defiled, faded or substandard national flags and national emblems for central handling by the Hong Kong Special Administrative Region ("HKSAR") Government. PAS(CMA)7 added that while the public was encouraged to keep the national flags and national emblems in good condition for reuse, in case people wished to dispose of any national flags and national emblems kept by them, they could make use of the designated collection points, and should never discard them in a way which undermined their dignity.

Review of the Regional Flag and Regional Emblem Ordinance ("RFREO")

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15. Members queried why the Administration did not amend RFREO and NFNEO in parallel to ensure that the enforcement standards of relevant offences were aligned and avoid giving rise to disparities between the two ordinances. SCMA explained that HKSAR had the constitutional responsibility to implement the amended National Flag Law and the amended National Emblem Law locally by amending NFNEO as soon as possible, therefore priority was accorded to this legislative amendment exercise. That said, SCMA undertook that the Administration would review the provisions of RFREO in a timely manner and propose amendments to RFREO as necessary. At the request of the Bills Committee, SCMA agreed to provide supplementary information in this connection.

(Post-meeting note: The supplementary information provided by the Administration [LC Paper No. CB(4)1419/20-21(01)] was tabled at the meeting on 3 September 2021 and was issued the members on the same day.)

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Clause-by-clause examination of the Bill

16. The Bills Committee commenced clause-by-clause examination of the Chinese text of the Bill. The Bills Committee completed scrutinizing clause 6 of the Bill.

Invitation of public views

17. Members agreed that a general notice should be posted on the Legislative Council's website to invite written submissions on the Bill.

III. Any other business

18. Members agreed that the next meeting would be held on Friday, 3 September 2021, at 10:45 am.

19. There being no other business, the meeting ended at 5:58 pm.

Council Business Division 4
Legislative Council Secretariat
3 December 2021

**Proceedings of the first meeting of the
Bills Committee on National Flag and National Emblem
(Amendment) Bill 2021
on Friday, 27 August 2021, at 4:00 pm
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
000349 - 000634	Members	Election of Chairman	
000635 - 000712	Chairman Members	Invitation of public views	
000713 - 001303	Chairman Administration	Opening speech of the Secretary for Constitutional and Mainland Affairs on the National Flag and National Emblem (Amendment) Bill 2021 ("the Bill") (Chinese version only) (see Annex II)	
001304 - 001907	Chairman Dr Priscilla LEUNG Administration	Proposed amendments to sections 4 and 7 of the National Flag and National Emblem Ordinance ("NFNEO") and the proposed new section 4A of NFNEO	
001908 - 002554	Chairman Mr LUK Chung-hung Administration	Definition of desecrating acts in relation to the national flag and national emblem under the proposed new section 7 of NFNEO; and training for teachers in respect of national flag and national emblem education	
002555 - 003035	Chairman Mr Tony TSE Administration	The Administration's plan to review and amend the Regional Flag and Regional Emblem Ordinance ("RFREO")	
003036 - 003607	Chairman Mr YIU Si-wing Administration	National flag and national emblem education; the use and display of the national flag; and the enforcement of the proposed new section 7 of NFNEO	
003608 - 004301	Chairman Mr Steven HO Administration	The use and display of the national flag; and review of RFREO	
004302 - 004727	Chairman Mr Christopher CHEUNG Administration	Consequences of non-compliance with the directions to be given by the Secretary for Education ("SED")	

Time Marker	Speaker(s)	Subject(s)	Action required
004728 - 005012	Chairman Mr LAU Kwok-fan Administration	The scope of prohibition on certain uses of the national flag and national emblem under the Bill	
005013 - 005640	Chairman Ms YUNG Hoi-yan Administration	Scope of coverage of education on the national flag and national emblem	
005641 - 010304	Chairman Ir Dr LO Wai-kwok Administration	Disparities between the provisions in NFNEO after amended by the Bill and those in the existing RFREO	Admin. to provide supplementary information (para. 15 of minutes)
010305 - 010854	Chairman Mr KWOK Wai-keung Administration	Suggestion on enhancing the national security education courses run by universities funded by the University Grants Committee	Admin. to relay Mr KWOK's view to relevant universities for consideration (para. 13 of minutes)
010855 - 011254	Chairman Mr CHAN Han-pan Administration	The use, display, recovery and disposal of the national flag	
011255 - 011715	Chairman Mr Holden CHOW Administration	Ensuring schools' compliance with the directions to be given by SED for the inclusion of the national flag and national emblem in primary and secondary education	
011716 - 012420	Chairman Mr Tony TSE Mr Steven HO Administration	Review of RFREO and enforcement of the amended NFNEO	Admin. to provide supplementary information (para. 8 of minutes)
<i>Clause-by-clause examination of the Bill</i>			
012421 - 012535	Chairman Administration	Part 1 – Preliminary <u>Examination of clauses 1 and 2 of the Bill</u>	

Time Marker	Speaker(s)	Subject(s)	Action required
012536 - 020140	Chairman Mr Tony TSE Ms YUNG Hoi-yan Mr Steven HO Mr LUK Chung-hung Administration	Part 2 – Amendments to National Flag and National Emblem Ordinance (116 of 1997) <u>Examination of clauses 3 to 6 of the Bill</u> <i>Clause 4</i> - Discussion of the proposed new Preamble <i>Clause 5</i> - Enquiries on matters relating to the stipulations to be made by the Chief Executive and the proposed amendment to section 3(4) of NFNEO <i>Clause 6</i> - Enquiries on the rationale of the proposed amendments to section 4 of NFNEO	
020141 - 020232	Chairman Members	Date of next meeting and closing remarks	

新聞公報

政制及內地事務局局長在立法會《2021年國旗及國徽（修訂）條例草案》委員會首次會議開場發言（只有中文）

以下是政制及內地事務局局長曾國衛今日（八月二十七日）在立法會《2021年國旗及國徽（修訂）條例草案》委員會首次會議的開場發言全文：

主席：

今天我和律政司、教育局及禮賓處的同事出席《2021年國旗及國徽（修訂）條例草案》（《條例草案》）法案委員會的首次會議，解釋及回應議員就《國旗法》和《國徽法》這兩部全國性法律的本地立法工作。

國旗、國徽和國歌是國家的象徵和標誌，代表着國家的權威和尊嚴。針對實踐中存在的新情況、新問題，第十三屆全國人民代表大會常務委員會在去年十月通過了《國旗法》及《國徽法》的修正草案，以完善國家標誌制度，更好維護國家的形象和尊嚴。

《國旗法》及《國徽法》已列入《基本法》附件三，並已通過制定《國旗及國徽條例》以本地立法方式在香港特區實施。因應經修正的《國旗法》及《國徽法》內容，及參考《國歌條例》，我們在八月十八日首讀、動議二讀此《條例草案》，並提交予各位議員審議。此外，我們亦已在二月就《條例草案》的建議方向諮詢立法會政制事務委員會，議員普遍表示支持。

讓我先談今次《條例草案》的立法原則。這次法例修訂的原則非常清晰，就是要充分體現兩部經修正的全國性法律的規定、原則和精神，即保障國旗及國徽的正確使用，維護國旗及國徽的尊嚴，使市民尊重國旗及國徽，增強市民的國家觀念和弘揚愛國精神，同時兼顧香港特區的普通法法律制度，以及實際情況。

經修正的《國旗法》有24條條文，而《國徽法》則有19條條文。除了不適用於香港特區的條文外，其餘大部分的條文已適當地納入《條例草案》。

至於立法重點，《條例草案》分為四個部分，共有18項修訂條文，主要有三個修訂重點：

第一，明確國旗及國徽的使用規定，包括加入參與或出席升國旗儀式的人當守的禮儀、國旗及國徽的收回處置方式、不適當使用國旗及國徽等條文；

第二，加入禁止將國旗、國徽作某些用途的情況，以及清晰化侮辱國旗及國徽罪行的條文，並延長檢控期限，與《國歌條例》的相應規定一致；

第三，就國旗及國徽的教育，包括學校每日升旗和每周舉行升旗儀式，以及將國旗及國徽納入聲音廣播服務及電視節目服務，作出規定。

就《條例草案》的具體內容，我們會在逐條審議階段再作詳細解說。

藉此機會，我希望強調，我們的立法目的非常明確，是必須禁止所有故意並公開侮辱國旗或國徽的行為，包括在現實生活或網絡平台上的行為。因此，任何意圖、故意及公開侮辱國旗及國徽的行為（包括違反《條例草案》內的指引性條文）均有可能違法。執法機構會根據法例的相關規定，就每個個案的實際情況及搜集所得的證據作整盤考慮，並將檢控個案交由法庭作出裁決。因此，我們難以就不同個案和情境，評論個別情況會否觸犯法例。

正如我在《條例草案》二讀的發言中指出，《條例草案》的根本原則及主要精神只有一個，就是「尊重」，尊重我們的國家、尊重作為我們國家象徵和標誌的國旗及國徽。我相信大眾很容易理解這種尊重精神，亦相信市民都能夠做到。

歡迎各位議員對《條例草案》的政策方向提出意見，我亦希望議員支持早日通過《條例草案》。我們會全力配合委員會的審議工作。

多謝主席。

完

2021年8月27日（星期五）
香港時間17時18分